



## OFFICIAL VISITORS GUIDE PUBLISHER REQUEST FOR PROPOSALS (“RFP”)

**ISSUE DATE:** November 23, 2020

**PROPOSALS DUE:** **2:00 P.M.** on **December 21, 2020** (“Submission Deadline”)

**INSTRUCTIONS:** Please submit five (5) paper copies and one (1) electronic copy of the Respondent’s proposal on a flash drive. Electronic files should include the name of the company as the first part of the file name. Proposals must be delivered in a sealed package in person, via mail or courier. Any proposal received by email, fax, or after the Submission Deadline will be rejected.

**SUBMIT TO:** Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010. Please write “**OVG RFP**” clearly on the outside of the sealed package.

**CONTACT INFO:** Any questions concerning this RFP must be submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **10:00 a.m.** on **December 14, 2020**. Material questions received will be answered collectively, rather than individually, in the form of a Letter of Clarification made available online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). Questions may be edited or combined for clarity or length at the discretion of HFC.

### OVERVIEW

Houston First Corporation (“HFC”) requests responsive proposals (“Proposals”) from experienced publishers able to design, sell advertising, publish and distribute the Official Houston Visitors Guide (“OVG”) in accordance with the requirements of this RFP.

HFC is a local government corporation created by the City of Houston to facilitate economic growth through the promotion of the greater Houston area and the business of conventions, meetings, tourism, and the arts. The entity is responsible for the operation of the George R. Brown Convention Center, Avenida Houston, Partnership Tower, Wortham Theater Center, Jones Hall for the Performing Arts, Miller Outdoor Theatre, an array of outdoor venues/properties, and parking facilities that can accommodate nearly 10,000 vehicles. HFC is the entity responsible for marketing Houston and increasing awareness of its many attractions and amenities.

### SCOPE OF SERVICES

The Proposer selected as result of this RFP will be responsible for the design, content development and creation, editing, printing, photography, paper, shipping, and print/digital delivery of the Houston OVG. Additionally, the Proposer selected will be responsible for advertising sales and revenue strategies, including a commission structure payable to HFC. OVG form and content shall be subject to the approval of HFC prior to publication.

The successful Proposer must have existing resources and significant experience in the areas of graphic design and layout of publications, licensing of photographic images, and content creation through in-house staff or freelance writers. Proposers must have existing access, ideally through a professional brochure distribution company, to ensure the timely placement of the OVG in regional hotels, visitor information centers, attractions, and other relevant that reach HFC target markets, such as Texas Travel Information Centers.

The OVG is published bi-annually in March and September. A copy of the latest edition of the OVG is available online at <https://www.visithoustontexas.com/travel-planning/visitor-guide/>.

## TECHNICAL SPECIFICATIONS

Proposers are advised that HFC has established the following technical specifications for each issue of the OVG:

- a. Minimum Print Run: 2X Bi-annual (225,000 Spring/Summer and 225,000 Fall/Winter)
- b. Trim Size: 6 1/2 x 9 3/4 inches
- c. Preferred Page Count: Minimum 80-Page Body + 10-Panel Map
- d. Binding: Perfect Bound (for above page count)
- e. Paper: 80# Cover / 60# Body
- f. Delivery: Approximately 200,000 issues of each run of the OVG must be distributed by publisher to regional hotels, visitor information centers, attractions, and other relevant locations that reach HFC target markets, such as Texas Travel Information Centers.

## NO PRE-SUBMITTAL CONFERENCE

A pre-submittal conference has not been scheduled for this RFP and HFC does not anticipate that such a meeting will be held.

## LETTERS OF CLARIFICATION

Responses to all material questions timely submitted by potential Proposers, as well as revisions incorporated into this solicitation by HFC, if any, will be confirmed collectively in one or more letters posted online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business) (each a "Letter of Clarification"). When issued, each Letter of Clarification will become part of this solicitation and automatically supersede any previous specifications or provisions in conflict therewith. By submitting their Proposal, Proposers shall be deemed to have reviewed all Letters of Clarification on the website and incorporated them into their submittal. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein. It is the responsibility of Proposers to monitor the foregoing website and ensure they review any such Letters of Clarification and incorporate them in their Proposal.

## PROPOSAL FORMAT

To be considered responsive, Proposers are asked to include the following information in their proposal:

- a. **Transmittal Letter:** Write a brief letter summarizing Proposer's understanding of the services required and communicate effectively why the Proposer should be selected. The letter must be signed by a person authorized to make representations on behalf of the Proposer and include a direct phone number and email address. Proposers must make a specific, unambiguous statement accepting and agreeing to comply with the Custom Publishing Agreement (provided below) if selected.
- b. **Experience:** Describe the Proposer's experience and ability to meet the needs of its clients. Provide two examples of work that are substantially similar to the requirements outlined in the RFP. Provide two references for whom Proposer has provided comparable services as will be required hereunder; for each reference, include a contact name, phone number, and email address for the appropriate contact. Proposers cannot use Houston First Corporation, the City of Houston, or the Greater Houston Convention & Visitors Bureau as references.
- c. **Personnel:** Identify the essential personnel who would will be dedicated to this project/account, such as the project manager, responsible corporate executive and any probable subcontractors. Please include a brief summary of their qualifications and years of experience. Note any diversity certifications held by the Proposer or its probable subcontractors.

- d. **Approach:** Describe Proposer's anticipated approach to the services, such as its advertising sales approach, revenue strategy and delivery/distribution methodology.
- e. **Commission:** Propose a commission to HFC based on advertising revenue for each OVG, including definitions of any key terms, such as "Net" or "Expenses". (Note that all costs of publication are to be borne exclusively by the publisher.)

## **EVALUATION**

HFC will review and rank every proposal received in response to this RFP based on the following weighted criteria: Transmittal Letter, including expressed acceptance of the Custom Publishing Agreement (20%); Experience (20%); Personnel (20%); Approach (20%), and Commission (20%).

HFC expects to award a five-year contract to the Proposer offering the best value to HFC, as measured by HFC utilizing the foregoing evaluation criteria. HFC reserves the right to schedule interviews with the top-ranked firms, not to exceed five, prior to selecting a Proposer. If interviews are scheduled, then up to an additional 20 points may be added to the existing scores of the top-ranked firms, for a maximum possible total of 120 points, based on their responsiveness and project approach during such interviews.

Without limiting the foregoing, HFC reserves the right to select or reject all or part of any proposal, waive minor technicalities, and select one or more proposals in the manner and to the extent that they serve the best interests of HFC. This RFP does not commit HFC to award a contract or issue a purchase order. HFC shall not pay or reimburse any costs incurred in the preparation of a proposal or participation in an interview incurred by any person or entity in connection with this RFP. By submittal a Proposal, Proposers acknowledges that some subjective judgments must be made by HFC in the RFP Process. HFC reserves the right to request proposal clarifications/additional information from some or all Proposers.

## **FORM OF AGREEMENT**

By submitting a response to this RFP, Proposer agrees, upon notice of selection, to enter into the Custom Publishing Agreement attached hereto as Attachment "A". Any questions or objections to the terms must be raised prior to submission of a Proposal by submitting an email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com). Responses to material questions and issues will be included in a Letter of Clarification. Preprinted forms or standard terms submitted by a Proposer shall be disregarded and may result in a Proposal being deemed, in HFC's reasonable discretion, as non-responsive.

## **VENDOR CODE OF CONDUCT**

Proposers who do business or seek to do business with HFC are expected to interact with HFC with high ethics and integrity. To promote ethical conduct by its existing and potential contractors, HFC has adopted a Code of Conduct for Vendors, available online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). HFC requires that all Proposers be familiar with and abide by the Code of Conduct for Vendors.

## **RESTRICTIONS ON COMMUNICATIONS**

Throughout the selection process, commencing with the Issue Date, potential Proposers are directed not to communicate, directly or indirectly, with any HFC employee, officer, director, or selection committee member regarding their Proposal, or any matter relating to this solicitation, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com). Proposers are solely responsible for observation and compliance with such restrictions, and HFC reserves the right to reject any submittal due to violation of this provision.

## **CONFLICTS OF INTEREST**

Proposers are advised that they have an affirmative obligation to disclose any affiliation or business relationship with an HFC employee, officer, or director creating a conflict of interest (or appearing to a reasonable person to potentially exist). Those who need the disclosure form may find it online at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a proposal, Proposers represent to HFC that they have complied with the requirements of Chapter 176 of the Texas Local Government Code.

## **PROTEST PROCEDURES**

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material solicitation content must be filed by the actual or potential Proposer with the Purchasing Agent no later than five business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Proposer recommended by the selection committee, or otherwise relates to the alleged misapplication of selection criteria, then the Purchasing Agent must receive the protest from an actual Proposer after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this solicitation by an HFC committee or Board of Directors, whichever is earlier.

All protests must be made in writing and delivered to Houston First Corporation, Attn: Purchasing Agent, 701 Avenida de las Americas, Ste. 200, Houston, TX 77010. To be considered by HFC, protests must be timely received and include, at a minimum, all of the following information: (a) The name, address and contact information of the Proposer, with sufficient information to establish that a bona fide Proposer is the person or entity filing the protest; (b) The full title of the solicitation; (c) Material grounds for the protest, including the provisions of the solicitation and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the Proposer; (e) Reference to and attachment of any pertinent documents or sources relied upon by the protestor that the protestor wishes to have HFC consider; and (f) An affidavit attached to support any factual allegations stated in the submission. The Purchasing Agent will notify the Proposer promptly to acknowledge receipt of a protest.

## **PUBLIC INFORMATION**

HFC is subject to the Texas Public Information Act ("TPIA"). Information submitted by Proposers is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Proposers will be advised of any request for public information that implicates their materials and may, in accordance with applicable law, elect to assert objections to disclosure with the Texas Attorney General at their cost and expense.

## **RFP PACKETS**

A complete copy of this RFP, including exhibits, necessary forms and other relevant information is available on-line at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). This RFP provides the information necessary to prepare and submit a proposal for consideration and ranking by HFC.

## **WITHDRAWAL OF PROPOSAL; ERRORS**

To withdraw a Proposal due to an error or any other reason, a written request from the Proposer must be received at [bids@houstonfirst.com](mailto:bids@houstonfirst.com) prior to the Submission Deadline.

**ATTACHMENT “A”  
CUSTOM PUBLICATION AGREEMENT**

This Custom Publication Agreement (“Agreement”) is made by and between Houston First Corporation, a Texas local government corporation (“HFC”) whose address is 701 Avenida de las Americas, Suite 200, Houston, Texas 77010, and [TBD] (“Publisher”), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

**ARTICLE 1: RESPONSIBILITIES**

1.1 Publisher agrees to and shall, for and on behalf of HFC, design, manage, edit, produce, publish, print, and distribute paper and digital editions of the Houston Official Visitors Guide (“OVG”) twice annually, subject to and in accordance with the terms, conditions and standards set forth in this Agreement.

1.2 Publisher shall develop an advertising sales and revenue strategy for each edition of the OVG and shall employ or retain the services of experienced sales personnel able to effectuate such strategy and otherwise endeavor to maximize the generation of revenue in connection with the OVG. Publisher shall ensure that all OVG advertisers meet commercially reasonable credit policies and submit advertisements for goods and services appropriate for the intended readership and promotional purpose of the OVG.

1.3 All OVG content, including by way of example and not limitation, articles, images, and advertisements, shall be in accordance with brand standards and submitted to HFC for review prior to publication, and HFC reserves the right to decline, refuse, or seek to modify advertising based on content. Publisher shall promptly correct any OVG content to which HFC raises an objection; publisher acknowledges and agrees, however, that nothing HFC does or fails to do with regard to the review of any OVG content shall diminish or relieve Publisher from its duties and obligations under this Agreement or any applicable law.

1.4 Publisher represents to HFC that the OVG is designed, produced, published, and distributed in strict accordance with the following technical specifications:

- a. Minimum Print Run: 2X Bi-annual (225,000 Spring/Summer and 225,000 Fall/Winter)
- b. Trim Size: 6 1/2 x 9 3/4 inches
- c. Preferred Page Count: Minimum 80-Page Body + 10-Panel Map
- d. Binding: Perfect Bound (for above page count)
- e. Paper: 80# Cover / 60# Body
- f. Approximately 200,000 issues of each run of the OVG must be distributed by publisher to regional hotels, visitor information centers, attractions, and other relevant locations that reach HFC target markets, such as Texas Travel Information Centers.

1.5 Publisher shall retain the services of experienced distribution company able to access area hotels, visitor information displays, and other distribution points identified by HFC that reach HFC target markets.

1.6 Publisher agrees to and shall be liable for payment of all expenses incurred in the development and

production of each edition of the OVG, including by way of example and not limitation, amounts payable to third-party entities and individuals for writing, design, editing, photography, paper supply, printing, and distribution.

1.7 Publisher shall provide HFC with status and activity reports relating to the development of the OVG at least once per month and shall promptly respond to any requests for information from HFC.

1.8 Publisher shall undertake and complete its services in a manner commensurate with the best interests of HFC and consistent with the skill, judgment, diligence, and care ordinarily provided by entities performing comparable services. Publisher shall perform expeditiously to ensure the timely and orderly completion of its services.

1.9 Publisher shall act in accordance with applicable law and observe high standards of ethics in the conduct of its services and responsibilities under this Agreement. Publisher represents and warrants to HFC that it shall obtain prior authorization and comprehensive releases for the mutual benefit of the parties from any and all writers, photographers, designers, and other contributors with respect to all materials commissioned or otherwise published or used in each edition of the OVG.

1.10 Publisher shall not take for itself or divert to a third party any corporate opportunity arising out of this Agreement or discovered otherwise through the use of HFC property or information. Publisher represents that it is not a party to any outstanding agreement creating or appearing to create a conflict of interest with regard to its services hereunder or that would preclude Publisher from complying with the terms of this Agreement; Publisher shall not enter into any such conflicting agreement during the Term.

## **ARTICLE 2: PAYMENT AND TERM**

2.1 Subject to the terms and conditions of this Agreement, Publisher agree to pay HFC the following commission: **[TBD]**.

2.2 Each payment to HFC shall include a true and correct accounting of **[TBD]**, and such other detail as HFC may reasonably require.

2.3 If any payment is disputed by HFC for any reason, such as inadequate description or supporting documentation, then Publisher shall promptly provide HFC with such additional information, clarification, or remedial measures as HFC may reasonably require.

2.4 HFC shall not be responsible or liable for any payment obligation incurred by Publisher or any financial loss in connection with the OVG.

2.5 The term of this Agreement shall commence on the Effective Date and end on the fifth anniversary of the Effective Date (the "Term"); provided, however, that upon written notice from HFC, the Term may be extended to ensure completion of the services, on the same terms and conditions set forth herein, for up to six calendar months.

## **ARTICLE 3: LIMITATION OF LIABILITY**

**3.1 HFC WILL NOT BE LIABLE TO PUBLISHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, INTEREST, LOST PROFITS (DIRECT OR INDIRECT) AND/OR LOST REVENUES, HOWSOEVER ARISING, WHETHER CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF**

**LIABILITY, EVEN IF HFC WAS ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.**

**3.2 PUBLISHER AGREES TO AND DOES HEREBY RELEASE HFC FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY PUBLISHER UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HFC.**

**3.3 PUBLISHER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, INFRINGEMENT OR MISUSE OF INTELLECTUAL PROPERTY, FINES, CITATIONS, AND EXPENSES (INCLUDING, BY WAY OF EXAMPLE AND NOT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR ANY INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE WORK OR PERFORMANCE BY PUBLISHER UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO PUBLISHER AND/OR ITS EMPLOYEES', OFFICERS', DIRECTORS', AGENTS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "PUBLISHER'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND PUBLISHER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF INDEMNITEES; ACTUAL OR ALLEGED VIOLATIONS OF APPLICABLE LAW; OR MATERIAL FAILURE OF PUBLISHER TO PERFORM OR OBSERVE ANY OF THE COVENANTS, TERMS AND CONDITIONS OF THIS AGREEMENT. PUBLISHER'S INDEMNIFICATION OBLIGATIONS HEREUNDER SHALL SURVIVE EXPIRATION OF THE TERM OR THE SOONER TERMINATION OF THIS AGREEMENT.**

#### **ARTICLE 4: CONFIDENTIALITY**

4.1 As used herein, the term "Confidential Information" shall mean any information relating to the business, operations, plans, finances, or assets of HFC (whether oral or written, and whether in electronic or other form), including but not limited to mailing lists and other OVG recipient or distributor contact information, disclosed to Publisher or learned or developed by Publisher in connection with the performance of services by Publisher under this Agreement.

4.2 Publisher agrees to and shall hold all Confidential Information in strict confidence and protect it with the same degree of care with which the Publisher protects its own confidential information, but in any event with no less than a commercially reasonable standard of care; use Confidential Information only for purposes permitted or necessary to fulfill contractual obligations between Publisher and HFC; not copy or otherwise duplicate Confidential Information, or knowingly allow anyone else to copy or otherwise duplicate any Confidential Information then under its control; restrict disclosure of Confidential Information solely to select employees on a need-to-know basis who are under legal obligations requiring them to keep such Confidential Information confidential; not take advantage of any business opportunity based on or derived in whole or in part from the Confidential Information; and not otherwise disclose Confidential Information to any other person or entity.

4.3 Publisher hereby acknowledges and agrees that in the event of any actual or threatened breach of

this Agreement (including, without limitation, disclosure of the Confidential Information), HFC may suffer irreparable harm and injury and no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, Publisher agrees that, in addition to all other rights and remedies available at law or in equity (all of which are reserved by HFC), HFC shall be entitled to injunctive relief and specific performance under this Agreement, as well as the right to recover all costs (including reasonable attorneys' fees) that may be incurred to enforce this Agreement.

4.4 If Publisher is legally compelled, pursuant to a subpoena or other applicable law to disclose any Confidential Information disclosed to it by HFC, then Publisher agrees that it shall provide HFC with reasonably prompt notice of such request or requirement, and will in good faith consult with and consider the suggestions of HFC concerning the nature and scope of such Confidential Information the Publisher proposes to disclose.

## **ARTICLE 5: TERMINATION**

5.1 Publisher shall be deemed to be in default under this Agreement due to the occurrence of any of the following events: (a) Publisher fails to perform or observe any term, condition or requirement under this Agreement; (b) Publisher, or any employee, agent, contractor, or subcontractor of Publisher, violates applicable law in connection with performance of services; (c) Publisher becomes insolvent; (d) All or substantial part of Publisher's assets are assigned for the benefit of its creditors; (e) A receiver or trustee is appointed for Publisher; or (f) Publisher assigns this Agreement without the prior written consent of HFC.

5.2 If default by Publisher occurs, then HFC shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, HFC shall have the right, but not the obligation, to cure or cause to be cured on behalf of Publisher any such default, and Publisher shall pay HFC on demand all costs and expenses incurred by HFC in effecting such cure, in addition to all actual damages, losses, costs or expenses incurred by HFC as a result of such default by Publisher.

5.3 HFC may terminate this Agreement at any time by giving 30 calendar days' written notice to Publisher. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. On receiving the notice, Publisher shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel any existing orders or subcontracts that are chargeable to this Agreement. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE THE SOLE AND EXCLUSIVE REMEDIES OF PUBLISHER FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. PUBLISHER WAIVES ANY CLAIM IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM TERMINATION OF THIS AGREEMENT BY HFC FOR CONVENIENCE.**

5.4 Publisher may terminate this Agreement only if HFC defaults and fails to cure the default after receiving written notice thereof. Default by HFC occurs if HFC fails to perform one or more of its material duties under this Agreement. If a default occurs and Publisher seeks to terminate the Agreement, then Publisher must deliver a written notice to HFC describing the default and proposed termination date. Such date must be at least 30 days after HFC receives notice. If HFC cures the default before the proposed termination date, then the proposed termination date is ineffective. If HFC does not cure the default before the proposed termination date, then Publisher may terminate this Agreement upon 30 days' notice to HFC and may seek any remedy available under applicable law, subject to the provisions and limitations of this Agreement.



5.5 The rights and remedies of HFC under this Agreement shall be cumulative. HFC shall have and may exercise all other rights and remedies not inconsistent herewith as provided under applicable law, or in equity. No exercise by HFC of one right or remedy shall be deemed an election, and no delay by HFC shall constitute a waiver, election or acquiescence to any default, breach, violation, or non-performance by Publisher.

5.6 Upon a determination by a court of competent jurisdiction that termination of this Agreement pursuant to either Section 5.1 or Section 5.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 5.3 and Publisher's sole and exclusive remedy for wrongful termination shall be limited to termination for convenience as set forth in Section 5.3.

## **ARTICLE 6: MISCELLANEOUS PROVISIONS**

6.1 Inspections and Audits. HFC and its designees shall have the right to examine and review Publisher's books, records and billing documents which are directly related to performance or payment under this Agreement. Publisher shall maintain such books, records, and billing documents for two years after the cessation of Publisher's services under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations.

6.2 Instruments of Service. Publisher shall grant and assign and hereby does grant and assign to HFC all right, title, interest and full ownership worldwide in and to all Instruments of Service, including any modifications or improvements thereto, that are developed, written or produced by Publisher, its employees, contractors, agents, and subcontractors pursuant to this Agreement. Publisher shall execute all documents required by HFC to further evidence such assignment and ownership. Publisher shall cooperate with HFC in registering, creating or enforcing any copyrights or other possessory or proprietary rights arising hereunder. As used herein, the term "Instruments of Service" includes all representations, in any medium, of the tangible and intangible creative work performed by Publisher in connection with the OVG, including, without limitation, articles, newsletters, brochures, reports, surveys, questionnaires, models, sketches, drawings, photographs, graphics, logos, slogans, and other, similar documents and materials.

6.3 Successors and Assigns. HFC and Publisher, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement with respect to all covenants of this Agreement. Publisher shall not assign, in law or otherwise, sublet or transfer any interest in this Agreement without the prior written consent of HFC.

6.4 Notices. All notices and other communications required or permitted hereunder shall be in writing and given by registered or certified mail (return receipt requested and postage prepaid), by personal delivery or by a recognized overnight delivery service (such as DHL, Federal Express or UPS), and shall be determined to have been effectively given upon actual receipt or upon refusal of delivery or, if earlier and whether or not actually received, (i) one (1) business day after deposit with a recognized overnight delivery service for next business day delivery, properly addressed to the intended recipient, with delivery charges prepaid by, or billed to, the sender, or (ii) three (3) business days after deposit with the United States mail, registered or certified mail, return receipt requested, postage prepaid, properly addressed to the intended recipient. Notice must be addressed to the party to whom the notice is given at its address set out in this Agreement, or such other address the receiving party has designated previously by proper notice to the sending party.

6.5 Severability and Survival. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the completion of the Project or termination of the Agreement.

6.6 Governing Law/Venue. The Agreement shall be governed by the laws of the State of Texas, without regard to any conflict of law provisions. Litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas. Publisher accepts and consents to the exclusive jurisdiction of such courts and hereby waives any defenses or objections based on venue, inconvenient forum, or lack of personal jurisdiction.

6.7 Independent Contractors. HFC and Contractor agree that they do not intend to form, and this Agreement shall not be construed as creating, a partnership or joint venture under any circumstances. Publisher has the authority to select the means, methods and manner of providing services, subject to the terms and conditions set forth in this Agreement. Neither party hereto shall have any authority, in any manner or to any extent, to bind the other party. With respect to each other, the parties shall be independent contractors for all purposes.

6.8 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

6.9 Extent of Agreement. This Agreement represents the entire and integrated agreement between HFC and Publisher with regard to the subject matter hereof and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may not be altered or amended otherwise except in writing executed on behalf of all of the parties.

The parties hereto have caused this agreement to be duly executed, to be effective for all purposes as of the date of countersignature by HFC (the "Effective Date"):

[signature block to follow in final agreement]